

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

1           29.024 (2u) REVOCATION OF HUNTING LICENSES BASED ON INCOMPETENCY. The  
2 department shall revoke any license authorizing hunting issued to an individual for  
3 whom the department receives a record of a declaration under s. 54.25 (2) (c) 1. d.  
4 stating that the individual is incompetent to apply for a hunting license under this  
5 chapter.

6           **29.161 Resident small game hunting license.** A resident small game  
7 hunting license shall be issued subject to s. ss. 29.024 and 54.25 (2) (c) 1. d. by the  
8 department to any resident applying for this license. The resident small game  
9 hunting license does not authorize the hunting of bear, deer, elk, or wild turkey.

10           29.164 (3) (e) *Notification; issuance; payment.* The department shall issue a  
11 notice of approval to those qualified applicants selected to receive a wild turkey  
12 hunting license. A person who receives a notice of approval and who pays the fee in  
13 the manner required by the department shall be issued a wild turkey hunting license  
14 subject to ss. 29.024 and 54.25 (2) (c) 1. d.

1           29.171 (1) A resident archer hunting license shall be issued subject to ~~s. ss.~~  
2           29.024 and 54.25 (2) (c) 1. d. by the department to any resident applying for this  
3           license.

4           29.173 (1) ISSUANCE. A resident deer hunting license shall be issued subject to  
5           ~~s. ss.~~ 29.024 and 54.25 (2) (c) 1. d. by the department to any resident applying for this  
6           license.

7           29.182 (4m) LIMITATION OF ONE LICENSE. A person may be issued, or transferred  
8           under ~~par. (g)~~ sub. (4) (g), only one resident elk hunting license in his or her lifetime,  
9           and the resident elk hunting license shall be valid for only one elk hunting season.  
10          The issuance, or transfer under ~~par. (g)~~ sub. (4) (g), of the license to the person is  
11          subject to ~~s. ss.~~ 29.024 (2g) and 54.25 (2) (c) 1. d.

12          29.184 (6) (c) 1r. The department shall issue a notice of approval to those  
13          qualified applicants selected to receive a Class A bear license. A person who receives  
14          a notice of approval and who pays the fees required for the license shall be issued the  
15          license subject to ~~s. ss.~~ 29.024 (2g) and 54.25 (2) (c) 1. d.

16          29.184 (6) (c) 2. A Class B bear license shall be issued subject to ~~s. ss.~~ 29.024  
17          (2g) and 54.25 (2) (c) 1. d. by the department to any resident who applies for this  
18          license.

19          29.231 (1) A resident sports license shall be issued subject to ~~s. ss.~~ 29.024 and  
20          54.25 (2) (c) 1. d. by the department to any resident who applies for this license , and  
21          a nonresident sports license shall be issued subject to s. 29.024 by the department  
22          to any person who is not a resident and who applies for the license.

23          29.235 (1) ISSUANCE. A resident conservation patron license shall be issued  
24          subject to ~~s. ss.~~ 29.024 and 54.25 (2) (c) 1. d. by the department to any resident 14  
25          years old or older who applies for the license. A nonresident conservation patron

license shall be issued subject to s. 29.024 by the department to any person 14 years old or older who is not a resident and who applies for the license.

29.512 (1) No person may engage or be employed for any compensation or reward to guide, direct or assist any other person in hunting, fishing or trapping unless the person is issued a guide license by the department subject to ~~s.~~ ss. 29.024 and 54.25 (2) (c) 1. d. No guide license for hunting or trapping may be issued to or obtained by any person who is not a resident of this state. No guide license may be issued to any person under the age of 18 years. The holder of a guide license shall comply with all of the requirements of this chapter.

**46.011 Definitions.** (intro.) In chs. 46, 48, 50, 51, 54, 55 and 58:

## CHAPTER 54

### GUARDIANS AND WARDS

\*\*\*\*NOTE: "Guardians and Wards" is the title of ch. 880; is it what you want as the title of ch. 54?

\*\*\*\*NOTE: With respect to psychotropic medication, this is what I have done either in this redraft or previously in LRB-0039/P1:

a. Repealed s. 880.01 (7m), stats. (the definition of "not competent to refuse psychotropic medication"), previously renumbered as s. 54.01 (11).

b. Created s. 54.01 (18), a definition of "psychotropic medication," based on the Legislative Council draft WLC: 0220/P1.

c. Repealed s. 880.07 (1m), stats. (allegations in a petition that a person is incompetent to refuse psychotropic medication).

d. Stricken reference to incompetence to refuse psychotropic medication from s. 54.36 (renumbered from s. 880.33 (1), stats.).

e. Repealed s. 880.33 (4m) and (4r), stats. (court appointment of guardian to consent or refuse, standard for forcible administration).

f. Repealed s. 880.34 (6), stats., as does WLC: 0220/P1 (annual review, etc.).

g. Added to s. 54.25 (2) (d) 2. a. language from WLC: 0220/P1 concerning voluntary receipt by a ward of medication, including psychotropic medication, if the ward does not protest, prohibiting the involuntary administration of psychotropic medication, defining "protest," and creating a best interest standard.

h. Repealed s. 880.33 (2) (d), stats. (hearing on petition).

Please see my Drafter's Note concerning this topic and its treatment in this draft.

## SUBCHAPTER I

DEFINITIONS

**54.01 Definitions.** In this chapter:

(1) "Activities of daily living" means activities relating to the performance of self care, work, and leisure activities, including dressing, eating, grooming, mobility, and object manipulation.

\*\*\*\*NOTE: I have in this revised definition removed "feeding," which seems unrelated to *self* care, and play, which seems redundant to "leisure."

(2) "Agency" means any public or private board, corporation, or association which, including a county department under s. 51.42 or 51.437, that is concerned with the specific needs and problems of mentally retarded, developmentally disabled, mentally ill, alcoholic, drug dependent and aging persons, including a county department under s. 51.42 or 51.437 individuals with developmental disability, mental illness, alcoholism, or drug dependency and of aging individuals.

(3) "Conservator" means a person who is appointed by a court at an individual's request under s. 54.76 (2) to manage the estate of the individual.

(4) "Degenerative brain disorder" means an individual's loss or disfunction of brain cells to the extent that the individual is substantially impaired in ability to provide for his or her own care or custody.

\*\*\*\*NOTE: This is the definition (revised grammatically) from WLC: 0037/1. Does one provide for one's own custody?

(5) "Depository account" has the meaning given in s. 815.18 (2) (e).

(6) "Durable power of attorney" has the meaning given in s. 243.07 (1) (a).

\*\*\*\*NOTE: I have renumbered most of the definitions in this draft, to account for added definitions. This subsection was originally numbered (3m) as a time-saving measure. In addition, I have not added "or s. 243.10" as requested. The definition under s. 243.07 (1) (a) subsumes the form for the Wisconsin basic power of attorney for finances and property under s. 243.10; in addition, s. 243.10 is not a definition per se; and, lastly, a defined term in the statutes that refers to another defined term may have only one referent (i.e., it may not be defined to be "A" or "B").

\*\*\*\*NOTE: Note that I have not included your proposed definition of "evaluative capacity." Please see the \*\*\*\* NOTE under the definition of "incapacity."

1           (7) “Guardian” means ~~one~~ a person appointed by a court under s. 54.10 to have  
2     ~~care, custody and control of the person~~ act on behalf of a minor or an individual  
3     determined incompetent or ~~the management of~~ to manage the estate or provide for  
4     the personal needs of a minor, an individual determined incompetent, or a  
5     spendthrift.

      \*\*\*\*NOTE: I did not include corporate guardians or entity guardians in this definition as requested. Please look at the definition of “person” in s. 990.01 (26), stats., (which applies to all the statutes). It encompasses corporate guardian and entity guardians. This definition indicates that only a guardian of the estate is appointed for a spendthrift; correct?

6           (8) “Guardian of the estate” means a guardian appointed to comply with the  
7     duties specified in s. 54.19 and to exercise any of the powers specified in s. 54.20.

8           (9) “Guardian of the person” means a guardian appointed to comply with the  
9     duties specified in s. 54.25 (1) and to exercise any of the powers specified in s. 54.25  
10    (2).

11          (10) “Incapacity” means the inability of an individual effectively to receive and  
12    evaluate information or to communicate a decision with respect to the exercise of a  
13    right or power.

      \*\*\*\*NOTE: On Betsy Abramson’s advice, this definition is the same language as that proposed in your “Appendix: Alternative Language” as the definition of “evaluative capacity,” except that: (1) It is written in the negative (i.e., “inability,” rather than “ability”); (2) I omitted “make [a decision]” because that seems redundant to “communicate a decision”; and (3) I omitted “decision making,” because that seems unnecessary (all powers of an individual would appear to require some form of decision making). Note that this definition replaces use of the terms “incapacity,” “functional capacity,” and “evaluative capacity” throughout the draft, except for the term “incapacity of the guardian,” which has been changed to “inability of the guardian.” This change particularly affects the following: 54.01 (21), 54.15 (4), 54.21 (6) (a) and (c), 54.52 (2), and 54.68 (2) (f). After studying the issue further, I did *not* change the term “incapacitated” as it is used in numerous places in s. 54.50 (2) (renumbered from s. 50.06, stats.); use of that term in that subsection is subject to the definition of the term in s. 54.50 (2) (a), which limits the individual lack of capacity to health care decisions; I would think that you would want to keep this limitation. Please review.

      \*\*\*\*NOTE: I have repealed the definition of “incompetent” that was amended under 03-0039/P1, because the new language proposed for s. 54.10 replaces the definition. I also have not drafted the definition of “individual found incompetent” that was proposed,

because, where the term is used, reference to s. 54.10 can be added and the defined term is then unnecessary. See, for example, this treatment in s. 54.01 (7).

1           (11) "~~Developmentally disabled person~~ Individual with developmental  
2     disability" means any individual having a disability attributable to mental  
3     retardation, cerebral palsy, epilepsy, autism or another neurological condition  
4     closely related to mental retardation or requiring treatment similar to that required  
5     for ~~mentally retarded individuals~~ with mental retardation, which has continued or  
6     can be expected to continue indefinitely, substantially impairs the individual from  
7     adequately providing for his or her own care or custody, and constitutes a substantial  
8     handicap to the afflicted individual. The term does not include ~~a person~~ an  
9     individual affected by senility which is primarily caused by the process of aging or  
10    ~~the infirmities of aging~~ degenerative brain disorder.

11           (12) "Interested person" means any of the following:

12           (a) For purposes of a petition for guardianship or protective placement, any of  
13     the following:

\*\*\*\*NOTE: Do you intend *in this bill* to amend ch. 55 to use this definition? Where?

- 14           1. The proposed ward, if he or she has attained 14 years of age.
- 15           2. The spouse or adult child of the proposed ward, or the parent of a proposed  
16     ward who is a minor.
- 17           3. For a proposed ward who has no spouse, child, or parent, an heir, as defined  
18     in s. 851.09, of the proposed ward that may be reasonably ascertained with due  
19     diligence.
- 20           4. Any individual who is nominated as guardian or appointed to act as guardian  
21     or fiduciary for the proposed ward by a court of any state, any trustee for a trust  
22     established by or for the proposed ward, any person appointed as agent under a

1 power of attorney for health care, or any person appointed as attorney-in-fact under  
2 a durable power of attorney.

\*\*\*\*NOTE: Please note that I retained "or," rather than using "and" as proposed for  
s. 54.01 (12) (a) 2., 3., and 4., to avoid the implication that all persons specified would be  
collectively required to function as "interested persons". Also, your instructions were  
unclear: do you wish to retain "fiduciary" in the phrase "appointed to act as ..."?

3 5. If the proposed ward is a minor, the individual who has exercised principal  
4 responsibility for the care and custody of the proposed ward during the period of 60  
5 consecutive days immediately before the filing of the petition.

6 6. If the proposed ward is a minor and has no living parent, any individual  
7 nominated to act as fiduciary for the minor in a will or other written instrument that  
8 was executed by a parent of the minor.

9 7. If the proposed ward is receiving moneys paid, or if moneys are payable, by  
10 the federal department of veterans affairs, a representative of the federal  
11 department of veterans affairs, or, if the proposed ward is receiving moneys paid, or  
12 if moneys are payable, by the state department of veterans affairs, a representative  
13 of the state department of veterans affairs.

14 8. If the proposed ward is receiving long-term support services or similar public  
15 benefits, the county department of human services or social services that is providing  
16 the services or benefits.

17 9. The corporation counsel of the county in which the petition is filed and, if the  
18 petition is filed in a county other than the county of the proposed ward's residence,  
19 the corporation counsel of the county of the proposed ward's residence.

\*\*\*\*NOTE: I did not draft the language you proposed as a change to this subdivision  
from the language in LRB-0039/P1, because, under your wording, the corporation  
counsel of the county in which the petition is filed would *only* be included if the petition  
was filed in a county *other* than the county of the proposed ward's residence; I assumed  
that this result is not what you intend.

20 10. Any other person required by the court.

1 (b) For purposes of proceedings subsequent to an order for guardianship or  
2 protective placement, any of the following:

\*\*\*\*NOTE: Do you intend in this bill to amend ch. 55 with this definition? If not, the reference to "for purposes of a petition for protective placement" should be eliminated.

\*\*\*\*NOTE: Please note that I did not make the change from "any" to "all," so as to avoid the implication that an "interested person" must include all those specified.

- 3 1. The guardian.
- 4 2. The spouse or adult child of the ward or the parent of a minor ward.
- 5 3. Any other individual that the court may require, including any fiduciary that  
6 the court may designate.
- 7 4. The county of venue, if the county has an interest.

8 (13) "Least restrictive" means that which places the least possible restriction  
9 on personal liberty and the exercise of rights and that promotes the greatest possible  
10 integration of an individual into his or her community that is consistent with  
11 meeting his or her essential requirements for health, safety, habilitation, treatment,  
12 and recovery and protecting him or her from abuse, exploitation, and neglect.

\*\*\*\*NOTE: I did not draft "constitutional" to modify rights; presumably, you don't want to limit the person to constitutionally-guaranteed rights to the exclusion of statutory rights.

13 (14) "Meet the essential requirements for physical health or safety" means  
14 perform those actions necessary to provide the health care, food, shelter, clothes,  
15 personal hygiene, and other care without which serious physical injury or illness will  
16 likely occur.

17 (15) "Physician" has the meaning given in s. 448.01 (5).

18 (16) "Proposed ward" means an individual, including a minor, a person alleged  
19 to be incompetent, and alleged spendthrift, for whom a petition for guardianship is  
20 filed.



\*\*\*\*NOTE: Please review this definition. Because you have decided to include spendthrifts in ch. 54, use of this definition eliminates the necessity of specifying spendthrifts throughout the chapter, as does the definition of "ward."

1           (17) "Psychologist" has the means a licensed psychologist, as defined given in  
2 s. 455.01 (4).

3           (18) "Psychotropic medication" means a prescription drug, as defined in s.  
4 450.01 (20), that is used to treat a psychiatric symptom or challenging behavior.

5           (19) "Serious and persistent mental illness" means a mental illness which is  
6 severe in degree and persistent in duration, which causes a substantially diminished  
7 level of functioning in the primary aspects of daily living and an inability to cope with  
8 the ordinary demands of life, which may lead to an inability to maintain stable  
9 adjustment and independent functioning without long-term treatment and support  
10 and which may be of lifelong duration. "Serious and persistent mental illness"  
11 includes schizophrenia as well as a wide spectrum of psychotic and other severely  
12 disabling psychiatric diagnostic categories, but does not include degenerative brain  
13 disorder or a primary diagnosis of mental retardation or of alcohol or drug  
14 dependence.

\*\*\*\*NOTE: I included this definition (the same as s. 51.01 (3g), stats.,) because the term "serious and persistent mental illness" is now used in s. 54.15 (6) and is not, at present, elsewhere defined. It contains the term "infirmities of aging," which I have changed to "degenerative brain disorder." Please review.

15           (20) "Spendthrift" means an individual who, because of the use of alcohol or  
16 other drugs or because of gambling or other wasteful course of conduct, is unable to  
17 attend to business or is likely to affect the health, life, or property of himself or herself  
18 or others so as to endanger his or her support and dependents or expose the public  
19 to the support.

\*\*\*\*NOTE: I created this definition in ch. 54, instead of renumbering it from ch. 880, stats., because it is used in subchapter IV of ch. 880, stats. Do you want to move subch. IV to ch. 54? Where? Is my changed language for the definition what you want?

(22) “Ward” means an individual for whom a guardian has been appointed.

## APPOINTMENT OF GUARDIAN

3. For purposes of appointment of a guardian of the estate, because of an impairment, the individual is unable to effectively to receive and evaluate

1 information or to make or communicate decisions related to management of his or  
2 her property or financial affairs, to the extent that any of the following applies:

3 a. The individual has property that will be dissipated in whole or in part.

4 b. The individual is unable to provide for his or her support.

5 c. The individual is unable to prevent financial exploitation.

6 4. The individual's need for assistance in decision-making or communication  
7 is unable to be met effectively and less restrictively through appropriate and  
8 reasonably available training, education, support services, health care, assistive  
9 devices, or other means that the individual will accept.

10 (b) Unless the proposed ward is unable to communicate decisions effectively in  
11 any way, the determination under par. (a) may not be based on mere old age,  
12 eccentricity, poor judgment, or physical disability.

13 (c) In appointing a guardian under this subsection, declaring incompetence to  
14 exercise a right under s. 54.25 (2) (c), or determining what powers it is appropriate  
15 for the guardian to exercise under s. 54.18, 54.20, or 54.25 (2), the court shall consider  
16 all of the following:

17 1. The report of the guardian ad litem, as required in s. 54.40 (4) (c).

18 2. The medical or psychological statement provided under s. 54.36 and any  
19 additional medical, psychological, or other evaluation ordered by the court under s.  
20 54.40 (4) (e) or offered by a party and received by the court.

\*\*\*NOTE: Are the cross-references in par. (c) (intro.), 1., and 2. What you intend?

21 3. Whether other reliable resources are available to provide for the individual's  
22 personal needs or property management, and whether appointment of a guardian is  
23 the least restrictive means to provide for the individual's need for a substitute  
24 decision-maker .

1           4. The preferences, desires, and values of the individual with regard to personal  
2 needs or property management.

3           5. The nature and extent of the individual's care and treatment needs and  
4 property and financial affairs.

5           6. Whether the individual's situation places him or her at risk of abuse,  
6 exploitation, neglect, or violation of rights.

7           7. Whether the individual can adequately understand and appreciate the  
8 nature and consequences of his or her impairment.

9           8. The individual's management of the activities of daily living.

10          9. The individual's understanding and appreciation of the nature and  
11 consequences of any inability he or she may have with regard to personal needs or  
12 property management.

13          10. The extent of the demands placed on the individual by his or her personal  
14 needs and by the nature and extent of his or her property and financial affairs.

15          11. Any physical illness of the individual and the prognosis of the individual.

16          12. Any mental disability, alcoholism, or other drug dependence of the  
17 individual and the prognosis of the mental disability, alcoholism, or other drug  
18 dependence.

19          13. Any medication with which the individual is being treated and the  
20 medication's effect on the individual's behavior, cognition, and judgment.

21          14. Whether the effect on the individual's evaluative capacity is likely to be  
22 temporary or long-term, and whether the effect may be ameliorated by appropriate  
23 treatment.

24          15. Other relevant evidence.

1 (d) Before appointing a guardian under this subsection, declaring  
2 incompetence to exercise a right under s. 54.25 (2) (c), or determining what powers  
3 it is appropriate for the guardian to exercise under s. 54.18, 54.20, or 54.25 (2), the  
4 court shall determine if additional medical, psychological, social, vocational, or  
5 educational evaluation is necessary for the court to make an informed decision  
6 respecting the individual's competency to exercise legal rights and may obtain  
7 assistance in the manner provided in s. 55.06 (8) whether or not protective placement  
8 is made.

9 (e) In appointing a guardian under this subsection, the court shall authorize  
10 the guardian to exercise only those powers under ss. 54.18, 54.20, and 54.25 (2) that  
11 are necessary to provide for the individual's personal needs and property  
12 management and to exercise the powers in a manner that is appropriate to the  
13 individual and that constitutes the least restrictive form of intervention.

14 (4) If the court appoints both a guardian of the person and a guardian of the  
15 estate for an individual, the court may appoint separate persons to be guardian of  
16 the person and of the estate, or may appoint one person to act as both.

17 **54.12 Exceptions to appointment of guardian.** (1) SMALL ESTATES. If a  
18 minor or an incompetent, except for his or her incapacity, is entitled to possession of  
19 ~~possess~~ personal property of a value of valued at \$10,000 or less, any court wherein  
20 in which an action or proceeding involving said the property is pending may, in its  
21 discretion, without requiring the appointment of a guardian, order that the clerk of  
22 court do one of the following:

\*\*\*\*NOTE: I have assumed from the language in par. (a) (below) that the clerk of  
court would perform these functions. Correct?

(a) Deposit the property in a savings account in a bank, ~~the payment of whose accounts in cash immediately upon default of the bank are~~ or other financial institution insured by an agency of the federal deposit insurance corporation; ~~deposit in a savings account in a savings bank or a savings and loan association that has its deposits insured by the federal deposit insurance corporation; deposit in a savings account in a credit union having its deposits guaranteed by the Wisconsin credit union savings insurance corporation or by the national board, as defined in s. 186.01 (3m);~~ government or invest the property in interest-bearing obligations of the United States. The fee for ~~the clerk's services~~ of the clerk of court in depositing and disbursing the funds under this paragraph is prescribed in s. 814.61 (12) (a).

(b) ~~Payment~~ Make payment to the natural guardian of the minor or to the person having actual custody of the minor.

\*\*\*\*NOTE: The proposed material referred to "the natural guardian of the minor, as defined in sub. \_\_\_\_\_," but no definition was included, unless you were referring to the definition of "minor." What is a "natural" guardian? Is it the parent?

(c) ~~Payment~~ Make payment to the minor.

(d) ~~Payment~~ Make payment to the person having actual or legal custody of the incompetent or to the person providing for the incompetent's care and maintenance for the benefit of the incompetent.

(e) Make payment to the agent under a durable power of attorney of the ward.

(2) INFORMAL ADMINISTRATION. If a minor or an incompetent, except for his or her incapacity, is entitled to possession of personal property of a value of \$5,000 \$10,000 or less from an estate administered through informal administration under ch. 865, the personal representative may, without the appointment of a guardian, do any of the following:

(a) With the approval of the register in probate, take one of the actions ~~under specified in sub. (2) (1) (a) to (e).~~

(b) With the approval of the guardian ad litem of the minor or incompetent, take one of the actions ~~under specified in sub. (2) (1) (a) to (e)~~ and file proof of the action taken and of the approval of the guardian ad litem with the probate registrar instead of filing a receipt under s. 865.21.

(3) UNIFORM GIFTS AND TRANSFERS TO MINORS. If a minor, except for his or her incapacity, is entitled to possession of personal property of any value, any court ~~wherein in which~~ an action or proceeding involving the property is pending may, without requiring the appointment of a guardian, order payment, subject to any limitations the court may impose, to a custodian for the minor designated by the court under ss. ~~880.61 to 880.72~~ subch. III of ch. 880 or under the uniform gifts to minors act or uniform transfers to minors act of any other state.

\*\*\*\*NOTE: This cross-reference must be fixed if you choose to renumber the remaining subchapters in ch. 880.

### SUBCHAPTER III

#### NOMINATION OF GUARDIAN;

#### POWERS AND DUTIES; LIMITATIONS

**54.15** ~~Nomination; selection of guardians~~ Selection of guardian; nominations; preferences; other criteria. The court shall do one of the following and shall consider all of the following nominations made by any interested person and, in its discretion, shall appoint a proper guardian, having due regard for the following, applicable preferences, and criteria in determining who is appointed as guardian:

1           (1) OPINIONS OF PROPOSED WARD AND FAMILY. ~~In appointing a guardian, the~~ The  
2 court shall take into consideration the opinions of the ~~alleged incompetent~~ proposed  
3 ward and of the members of the ~~his or her~~ family as to what is in the best interests  
4 of the proposed ~~incompetent~~ ward. However, the best interests of the proposed  
5 ~~incompetent~~ ward shall control in making the determination when the opinions of  
6 the family are in conflict with ~~the clearly appropriate decision~~ those best interests.  
7 The court shall also consider potential conflicts of interest resulting from the  
8 prospective guardian's employment or other potential conflicts of interest. ~~If the~~  
9 ~~proposed incompetent has executed a power of attorney for health care under ch. 155,~~  
10 ~~the court shall give consideration to the appointment of the health care agent for the~~  
11 ~~individual as the individual's guardian.~~

12           (2) AGENT UNDER DURABLE POWER OF ATTORNEY. The court shall appoint as  
13 guardian of the estate the agent under a proposed ward's durable power of attorney,  
14 unless the court finds that the appointment of the agent is not in the best interests  
15 of the proposed ward.

      \*\*\*\*NOTE: This provision is written as a requirement, as are ss. 54.15 (4)  
(renumbered from s. 880.09 (7)), 54.15 (5)) (renumbered from s. 880.09 (2)), and 54.15 (6)  
(renumbered from s. 880.09 (6)); what does the judge do if they conflict?

16           (3) AGENT UNDER A POWER OF ATTORNEY FOR HEALTH CARE. The court shall appoint  
17 as guardian of the person the agent under a proposed ward's power of attorney for  
18 health care, unless the court finds that the appointment of the agent is not in the best  
19 interests of the proposed ward.

20           (4) PERSON NOMINATED BY PROPOSED WARD.

21           (a) Any person individual other than a minor aged 14 years or younger may,  
22 ~~at such time as if the person has sufficient capacity~~ individual does not have  
23 incapacity to such an extent that he or she is unable to form an intelligent preference,



1 execute a written instrument, in the same manner as the execution of a will under  
2 s. 853.03, nominating ~~a person~~ another to be appointed as guardian of his or her  
3 person or property estate or both ~~in the event that if~~ a guardian is in the future  
4 appointed. ~~Such nominee shall be appointed as guardian by the~~ for the individual.  
5 The court shall appoint this nominee as guardian unless the court finds that the  
6 appointment of such nominee is not in the best interests of the person ~~for whom, or~~  
7 ~~for whose property, the guardian is to be appointed~~ proposed ward.

8 (b) A minor over 14 years may in writing in circuit court nominate his or her  
9 own guardian, but if the minor is in the armed service, is ~~without~~ outside of the state,  
10 or if other good reason exists, the court may dispense with the minor's right of  
11 nomination.

12 (c) If neither parent of a minor who has not attained the age of 15 is suitable  
13 and willing to be appointed guardian, the court may appoint the nominee of a minor.

\*\*\*\*NOTE: Have I amended paragraphs (b) and (c) (renumbered from s. 880.09 (1)  
and (3), stats.) as you wish?

14 (5) PREFERENCE PARENT OF A PROPOSED WARD. If one or both of the parents of a  
15 minor, ~~a developmentally disabled person or a person with other like incapacity or~~  
16 an individual with developmental disability are suitable and willing, the court shall  
17 appoint one or both of ~~them~~ as guardian unless the proposed ward objects. ~~The court~~  
18 ~~shall appoint a corporate guardian under s. 880.35 only if no suitable individual~~  
19 ~~guardian is available.~~

\*\*\*\*NOTE: Your instructions on this subsection are as follows:

"... please delete "or other person with other like incapacity" and change. Perhaps  
we should check with WCA as to whether there are any other situations where parents  
should be preferred ...?" How do you want me to change the phrase? Have you been able  
to check with WCA?

Should the parent of a spendthrift receive preference under this subsection?  
(Current law does not mention parents of spendthrifts.)

1           (6) ~~TESTAMENTARY GUARDIANSHIP OF CERTAIN PERSONS~~ NOMINATION BY PROPOSED  
2 WARD'S PARENTS. Subject to the rights of a surviving parent, a parent may by will  
3 nominate a guardian and successor guardian of the person or estate ~~of~~ for any of his  
4 or her minor children who ~~are~~ is in need of guardianship. For ~~a person over the age~~  
5 ~~of an individual who is aged 18 or older and is~~ found to be in need of guardianship  
6 under s. 880.33 54.10 by reason of a developmental disability or ~~other like incapacity~~  
7 serious and persistent mental illness, a parent may by will nominate a testamentary  
8 guardian. The parent may waive the requirement of a bond for such an estate that  
9 is derived through a will.

10           (7) ~~NONPROFIT CORPORATION AS GUARDIAN~~ PRIVATE NONPROFIT CORPORATION OR  
11 OTHER ENTITY. A private nonprofit corporation organized under ch. 181, 187, or 188  
12 is qualified to act or any other nonprofit or for profit entity that is approved by the  
13 court may be appointed as guardian of the person or of the property or both, of ~~an~~  
14 ~~individual found to be in need of guardianship under s. 880.33, if a proposed ward,~~  
15 if no suitable individual is available as guardian and the department of health and  
16 family services, under rules established under ch. 55, finds the corporation or entity  
17 to be a suitable agency to perform such duties.

\*\*\*\*NOTE: In LRB-0039/P1, I asked for an example of nonprofit entity that is not organized under ch. 181, 187, or 188, stats. Your answer was a partnership, LLC, trust, unincorporated association. Rob Marchant, our Business Associations drafter, has not heard of a non-profit LLC or partnership. Do you perhaps, instead, mean tax-exempt under 501c? Would you ever want a trust to be guardian of the *person*? If you are contemplating the possible appointment of all these, plus an unincorporated association as guardian, wouldn't it be simpler to refer to "person," (under the very broad meaning in s. 990.01 (26), stats., instead?

\*\*\*\*NOTE: Why does DHFS promulgate these rules under ch. 55, stats? Why not under this chapter (formerly, ch. 880, stats.)?

18           (8) STATEMENT OF ACTS BY PROPOSED GUARDIAN. (a) At least 96 hours before the  
19 hearing under s. 54.44, the proposed guardian shall submit to the court a sworn and  
20 notarized statement as to whether any of the following is true:

1           1. The proposed guardian has been convicted of a crime, as defined in s. 939.12.

      \*\*\*NOTE: Is this definition of a crime what you want? Note that it includes misdemeanors (which are distinguished from felonies in that felonies are punishable by imprisonment in state prison, whereas misdemeanors are punishable by imprisonment in a county jail).

2           2. The proposed guardian has filed for or received protection under the federal  
3 bankruptcy laws.

4           3. Any license, certificate, permit, or registration of the proposed guardian that  
5 is required under chs. 440 to 480 or by the laws of another state for the practice of  
6 a profession or occupation has been suspended or revoked.

7           (b) If par. (a) 1., 2., or 3. applies to the proposed guardian, he or she shall include  
8 in the sworn and notarized statement a description of the circumstances  
9 surrounding the applicable event under par. (a) 1., 2., or 3.

10           (9) LIMITATION ON NUMBER OF WARDS OF GUARDIAN. No person, except a nonprofit  
11 corporation approved by the department of health and family services under s.  
12 880.35, who has individual may have guardianship of the person of more than 5 or  
13 more adult wards who are unrelated to the person may accept appointment  
14 individual, except that a court may, under circumstances that the court determines  
15 are appropriate, waive this limitation to authorize appointment of the individual as  
16 guardian of the person of another adult ward unrelated to the person, unless  
17 approved by the department. No such person may accept appointment as guardian  
18 of no more than 10 such an additional 5 adult wards who are unrelated to the person  
19 individual. A corporation or entity that is approved by the department under sub.  
20 (7) is not limited in the number of adult wards for which the corporation or entity may  
21 accept appointment by a court as guardian.

22           **54.18 General duties and powers of guardian; limitations; immunity.**

23           (1) A ward retains all his or her rights that are not assigned to the guardian or

1 otherwise limited by statute. A guardian acting on behalf of a ward may exercise only  
2 those powers that the guardian is authorized to exercise by statute or court order.  
3 A guardian may be granted only those powers necessary to provide for the personal  
4 needs or property management of the ward in a manner that is appropriate to the  
5 ward and that constitutes the least restrictive form of intervention.

6 (2) A guardian shall do all of the following:

7 (a) Exercise the degree of care, diligence, and good faith when acting on behalf  
8 of a ward that an ordinarily prudent person exercises in his or her own affairs.

9 (b) Advocate for the ward's best interests, including, if the ward is protectively  
10 placed under ch. 55 and if applicable, advocating for the ward's applicable rights  
11 under ss. 50.09 and 51.61.

12 (c) Exhibit the utmost degree of trustworthiness, loyalty, and fidelity in relation  
13 to the ward.

14 (d) Notify the court of any change of address of the guardian or the ward.

15 (3) No guardian may do any of the following:

16 (a) ~~No guardian shall lend guardianship~~ Lend funds of the ward to himself or  
17 herself or, unless the court first approves the terms, rate of interest, and any  
18 requirement for security, lend funds of the ward to another.

19 (b) ~~No guardian shall purchase~~ Purchase property of the ward, ~~unless sold at~~  
20 ~~public sale~~ except at fair market value, subject to ch. 786, and with the approval of  
21 the court, ~~and then only if the guardian is a spouse, parent, child, brother or sister~~  
22 ~~of the ward or is a cotenant with the ward in the property.~~

\*\*\*\*NOTE: I corrected the numbering of the paragraphs under this subsection (I had mistakenly renumbered par. (a) from s. 880.19 (4) (c) as s. 54.18 (3) (h), rather than s. 54.18 (3) (a)).

1           (4) ~~Any~~ A guardian of the person or of the estate is immune from civil liability  
2 for his or her acts or omissions in performing the duties of the guardianship if he or  
3 she performs the duties in good faith, in the best interests of the ward, and with the  
4 degree of diligence and prudence that an ordinarily prudent person exercises in his  
5 or her own affairs.

6           **54.19 Duties of guardian of the estate.** Except as specifically limited in the  
7 order of appointment, the guardian of the estate shall do all of the following in order  
8 to provide a ward with the greatest amount of independence and self-determination  
9 with respect to property management in light of the ward's functional level,  
10 understanding, and appreciation of his or her functional limitations and the ward's  
11 personal wishes and preferences with regard to managing the activities of daily  
12 living:

13           (1) ~~The guardian of the estate shall take~~ Take possession of ~~all of the ward's~~  
14 ~~real and personal property, and of any rents, income, issues, and benefits therefrom,~~  
15 ~~whether accruing before or after the guardian's appointment from the property, and~~  
16 ~~of the any proceeds arising from the sale, mortgage, lease, or exchange thereof of the~~  
17 ~~property and prepare an inventory of these.~~ Subject to ~~such~~ this possession, the title  
18 of all ~~such~~ the estate and ~~to the increment and proceeds thereof shall be of the estate~~  
19 is in the ward and not in the guardian. ~~It is the duty of the guardian of the estate~~  
20 ~~to protect and preserve it, to retain, sell and invest it as hereinafter provided, to~~  
21 ~~account for it faithfully, to perform all other duties required of the guardian by law~~  
22 ~~and at the termination of the guardianship to deliver the assets of the ward to the~~  
23 ~~persons entitled thereto.~~

24           (2) Retain, expend, distribute, sell, or invest the ward's property, rents, income,  
25 issues, benefits, and proceeds and account for all of them, subject to ch. 786.

\*\*\*\*NOTE: Please see the \*\*\*\*NOTE under s. 54.22 (renumbered from s. 880.19 (5) (b)).

1           (3) Determine, if the ward has executed a will, the will's location, determine  
2           the appropriate persons to be notified in the event of the ward's death, and, if the  
3           death occurs, notify those persons.

\*\*\*\*NOTE: Please see the \*\*\*\*NOTE under s. 54.22 (renumbered from s. 880.19 (5) (b)).

4           (4) Use the ward's income and property to maintain and support the ward and  
5           any dependents of the ward and to provide for the postsecondary education expenses  
6           of any children of the ward.

\*\*\*\*NOTE: Please see the \*\*\*\*NOTE under s. 54.22 (renumbered from s. 880.19 (5) (b)).

7           (5) Prepare and file an annual account as specified in s. 54.62.

8           (6) At the termination of the guardianship, deliver the ward's assets to the  
9           persons entitled to them.

10          (7) ~~Every general guardian shall~~ With respect to claims, pay the just legally  
11          enforceable debts of the ward ~~out of from~~ the ward's personal estate and the income  
12          ~~of the ward's real estate, if sufficient, and if not, then out of the ward's real estate~~  
13          ~~upon selling the same as provided by law. But a temporary guardian shall pay the~~  
14          ~~debts of his or her ward only on order of the court.~~

15          (8) File, with the register of deeds of any county in which the ward possesses  
16          real property of which the guardian has knowledge, a sworn and notarized statement  
17          that specifies the legal description of the property, the date that the ward is  
18          determined to be an incompetent, and the name, address, and telephone number of  
19          the ward's guardian and any surety on the guardian's bond.

20          (9) Perform any other duty required by the court order.

1           **54.20 Powers of guardian of the estate. (1) STANDARD.** (intro.) The In  
2 exercising the powers under this section, the guardian of the estate may, without the  
3 approval of the court, retain any real or personal property possessed by the ward at  
4 the time of appointment of the guardian or subsequently acquired by the ward by gift  
5 or inheritance without regard to ch. 881, so long as such retention constitutes the  
6 exercise of shall use the judgment and care under the circumstances then prevailing,  
7 which that persons of prudence, discretion, and intelligence exercise in the  
8 management of their own affairs, not in regard to speculation but in regard to  
9 including the permanent, rather than speculative, disposition of their funds,  
10 considering and consideration of the probable income as well as the probable and  
11 safety of their capital. In addition, in exercising powers and duties under this  
12 section, the guardian of the estate shall consider, consistent with the functional  
13 limitations of the ward, all of the following:

14           (a) The ward's understanding of the harm that he or she is likely to suffer as  
15 the result of his or her inability to manage property and financial affairs.

16           (b) The ward's personal preferences and desires with regard to managing his  
17 or her activities of daily living.

18           (c) The least restrictive form of intervention for the ward.

      \*\*\*\*NOTE: Does this subsection now conform to your intent?

19           **(2) POWERS REQUIRING COURT APPROVAL.** The guardian of the estate may do any  
20 of the following with respect to the ward only with the court's prior written approval  
21 following any petitioner, except as provided in par. (a), notice, and hearing that the  
22 court requires:

23           (a) Make gifts, under the terms, including the frequency, amount, and donees  
24 specified by the court in approval of a petition under s. 54.21.

\*\*\*\*NOTE: Please review s. 54.20 (2) (intro.) and (a); have I now captured your intent?

1           (b) ~~Upon petition by the guardian, a parent, the spouse, any issue or next of kin~~  
2           ~~of any person, assets of the person may, in the discretion of the court and upon its~~  
3           ~~order, after such notice as the court may require, be transferred~~ Transfer assets of  
4           the ward to the trustee ~~or trustees~~ of an any existing revocable living trust ~~created~~  
5           ~~by the person for the benefit of~~ that the ward has created for himself or herself and  
6           ~~those dependent upon the person for support~~ any dependents, or, if the ward is a  
7           minor, to the trustee or trustees of a any trust created for the exclusive benefit of the  
8           ~~person, if a minor, which~~ ward that distributes to him or her at age 18 or 21, ~~or, if the~~  
9           ~~ward dies before age 18 or 21, to his or her estate, or as he or she appoints if he or~~  
10          ~~she dies prior to age 18 or 21~~ the ward has appointed by a written instrument that  
11          is executed after the ward attains age 14.

\*\*\*\*NOTE: Is this provision now worded as you intend?

12           (c) Establish a trust as specified under 42 USC 1396p (d) (4) and transfer assets  
13           into the trust.

14           (d) Purchase an annuity or insurance contract and exercise rights to elect  
15           options or change beneficiaries under insurance and annuity policies and to  
16           surrender the policies for their cash value.

17           (e) Ascertain and exercise any rights available to the ward under a retirement  
18           plan or account.

\*\*\*\*NOTE: I did not draft "Establish," as proposed, because a guardian would not,  
for instance, have the right to establish a right in a retirement plan, did you mean  
"Ascertain," as I have drafted? "Make application for?"

19           (f) Exercise any elective rights that accrue to the ward as the result of the death  
20           of the ward's spouse or parent.



1 (g) Release or disclaim, under s. 854.13, any interest of the ward that is received  
2 by will, intestate succession, nontestamentary transfer at death, or other transfer.

\*\*\*\*NOTE: By "lifetime transfer," do you mean during the life of the ward? If so,  
"lifetime" seems unnecessary; is "other" transfer, instead, okay?

3 (h) ~~A guardian of the estate appointed under this chapter for a married person~~  
4 ~~may exercise with the approval of the court, except as limited under s. 880.37, any~~  
5 ~~management and control right over the marital property or property other than~~  
6 ~~marital property and any right in the business affairs which the married person~~  
7 ~~could exercise under ch. 766 if the person were not determined under s. 880.12 to be~~  
8 ~~a proper subject for guardianship. Under this section, a guardian may consent to act~~  
9 ~~together in or join in any transaction for which consent or joinder of both spouses is~~  
10 ~~required or may execute~~ Execute under s. 766.58 ~~a marital property agreement with~~  
11 ~~the other ward's spouse or intended spouse,~~ but may not make, amend or revoke a  
12 will.

\*\*\*\*NOTE: I understand that, because of the creation of s. 54.21, s. 54.20 (2) (h) is  
not intended to overrule any of the court's interpretation of s. 880.173 in *The*  
*Guardianship of F.E.H.*, 154 Wis. 2d 576 (1990).

13 (i) Provide support for an individual whom the ward is not legally obligated to  
14 support.

15 (j) Convey or release a contingent or expectation interest in property, including  
16 a marital property right and any right of survivorship that is incidental to a joint  
17 tenancy or survivorship marital property.

18 (k) Adjust, compromise, and discharge all debts and claims for damages due the  
19 ward.

\*\*\*\*NOTE: Are these debts of the ward or debts payable to the ward? If the former,  
the language is redundant to s. 54.19 (7) (renumbered from s. 880.22 (1)).

20 (L) In all cases where in which the court ~~deems it~~ determines that it is  
21 advantageous to continue the business of a ward, ~~such business may be continued~~

1 by the guardian of the estate on such continue the business on any terms and  
2 conditions as may be specified in the order of the court.

3 (m) ~~The guardian or a creditor of any ward may apply~~ Apply to the court for  
4 adjustment of any claims against the ward incurred ~~prior to~~ before entry of the order  
5 appointing the guardian or the filing of a lis pendens as provided in s. ~~880.215~~ 54.47.  
6 The court shall by order fix the time and place it will adjust claims and the time  
7 within which all claims ~~must~~ shall be presented ~~or be barred~~. Notice of ~~the time and~~  
8 ~~place so fixed and limited~~ these times and the place shall be given by publication as  
9 ~~in estates of decedents; and all statutes relating to claims against and in favor of~~  
10 ~~estates of decedents~~ provided in s. 879.05 (4), and ch. 859 generally shall apply. As  
11 ~~in the settlement of estates of deceased persons, after~~ After the court has made the  
12 order, no action or proceeding may be commenced or maintained in any court against  
13 the ward upon any claim of over which the circuit court has jurisdiction.

14 (3) POWERS THAT DO NOT REQUIRE COURT APPROVAL. The guardian of the estate  
15 may do any of the following without first receiving the court's approval:

16 (a) Provide support from the ward's estate for an individual whom the ward is  
17 legally obligated to support.

18 (b) Enter into a contract, other than a contract that is specified in sub. (2) or  
19 that is otherwise prohibited under this chapter.

20 (c) Exercise options of the ward to purchase securities or other property.

21 (d) Authorize access to or release of the ward's confidential records.

22 (e) Apply for public and private benefits.

23 (f) Take any other action, except an action specified under sub. (2), that is  
24 reasonable or appropriate to the duties of the guardian of the estate.

1           (g) ~~The guardian of the estate may, with the approval of the court, after such~~  
2     ~~notice as the court directs, retain~~ Retain any real or personal property possessed by  
3     ~~that the ward at the time of the appointment of the possesses when the guardian or~~  
4     ~~subsequently acquired by is appointed or that the ward acquires by gift or~~  
5     ~~inheritance for such period of time as shall be designated in the order of the court~~  
6     ~~approving such retention, without regard to ch. 881 during the guardian's~~  
7     ~~appointment.~~

8           (h) ~~The guardian of the estate may, without approval of the court, invest~~ Invest  
9     ~~and reinvest the proceeds of sale of any guardianship assets of the ward and any of~~  
10    ~~the ward's other moneys in the guardian's possession in accordance with ch. 881.~~

11          (i) ~~The guardian of the estate may, with the approval of the court, after~~  
12    ~~Notwithstanding ch. 881, after such notice as the court directs, and subject to ch. 786,~~  
13    ~~invest the proceeds of sale of any guardianship assets of the ward and any of the~~  
14    ~~ward's other moneys in the guardian's possession in such the real or personal~~  
15    ~~property as the court determines that is determined by the court to be in the best~~  
16    ~~interests of the guardianship estate, without regard to of the ward ch. 881.~~

17          (j) ~~The guardian of the estate may, without approval of the court, sell~~ Subject  
18    ~~to ch. 786, sell any property of the guardianship estate of the ward that is acquired~~  
19    ~~by the guardian pursuant to sub. (4) under par. (h) or (i).~~

20          (k) ~~The guardian shall settle~~ Settle all accounts of the ward and may demand,  
21    ~~sue for, collect and receive all debts and claims for damages due him or her, or may,~~  
22    ~~with the approval of the circuit court, compound and discharge the same, and shall~~  
23    ~~appear for and represent his or her the ward in all actions and proceedings except~~  
24    ~~where those for which another person is appointed for that purpose.~~

25           **54.21 Petition to transfer ward's assets to another. (1) In this section:**

(a) "Other individual" means any of the following:

1. The ward's spouse, if any.
2. The guardian ad litem of the ward's minor child, if any.
3. The ward's disabled child, if any.

\*\*\*\*NOTE: What does "disabled" mean in this context? Developmental disability?  
Physical disability?

4. Any of the ward's siblings who has an ownership interest in property that is co-owned with the ward.

5. Any of the ward's children who is a caregiver, as defined in s. 46.986 (1) (b), for the ward.

\*\*\*\*NOTE: Is the definition of "caregiver" suitable for your purposes?

(b) "Will or similar instrument" includes a revocable or irrevocable trust, a durable power of attorney, or a marital property agreement.

(2) A guardian or other individual who seeks an order directing the guardian of the estate to transfer any of a ward's assets to or for the benefit of any person shall submit to the court a petition that specifies all of the following:

\*\*\*\*NOTE: Wouldn't "guardian" in sub. (2) (intro.) actually be "guardian of the person," since a guardian includes a guardian of the estate?

(a) Whether a proceeding by anyone seeking this authority with respect to the ward's property was previously commenced and, if so, a description of the nature of the proceeding and the disposition made of it.

(b) The amount and nature of the ward's financial obligations, including moneys currently and prospectively required to provide for the ward's maintenance, support, and well-being and to provide for others dependent upon the ward for support, regardless of whether the ward is legally obligated to provide the support. If the petitioner has access to a copy of a court order or written agreement that

1 specifies support obligations of the ward, the petitioner shall attach the copy to the  
2 petition.

3 (c) The property of the ward that is the subject of the petition, the proposed  
4 disposition of the property, and the reasons for the disposition.

5 (d) The wishes, if ascertainable, of the ward.

6 (e) As specified in sub. (3), whether the ward has previously executed a will or  
7 similar instrument.

8 (f) A description of any significant gifts or patterns of gifts that the ward has  
9 made.

10 (g) The names, post-office addresses, and relationships to the ward of all of the  
11 following:

12 1. Any presumptive adult heirs of the ward.

13 2. If the ward has previously executed a will or similar instrument, the named  
14 or described beneficiaries, if known, under the most recent will or similar instrument  
15 executed by the ward.

16 (3) (a) If a ward has previously executed a will or similar instrument and the  
17 petitioner is able, with reasonable diligence, to obtain a copy, the petitioner shall  
18 provide the copy to the court, together with a statement that specifies all of the  
19 following:

20 1. The manner in which the copy was secured.

21 2. The manner in which the terms of the will or similar instrument became  
22 known to the petitioner.

23 3. The basis for the petitioner's belief that the copy is of the ward's most recently  
24 executed will or similar instrument.

1 (b) If the petitioner is unable to obtain a copy of the most recently executed will  
2 or similar instrument or is unable to determine if the ward has previously executed  
3 a will or similar instrument, the petitioner shall provide a statement to the court that  
4 specifies the efforts that were made by the petitioner to obtain a copy or ascertain the  
5 information.

6 (c) If a copy of the most recently executed will or similar instrument is not  
7 otherwise available, the court may order the person who has the original will or  
8 similar instrument to provide a photocopy to the court for in camera examination.  
9 The court may provide the photocopy to the parties to the proceeding unless the court  
10 finds that doing so is contrary to the ward's best interests.

11 (d) The petitioner and the court shall keep confidential the information in a will  
12 or similar instrument, or a copy of the will or similar instrument, under this  
13 subsection, and may not, unless otherwise authorize, disclosed that information.

\*\*\*\*NOTE: Does this paragraph meet your intent?

14 (4) The petitioner shall serve notice upon all of the following, together with a  
15 copy of the petition, stating that the petitioner will move the court, at a time and  
16 place named in the notice, for the order described in the petition:

17 (a) If not the same as the petitioner, the guardian of the person and the  
18 guardian of the estate.

19 (b) Unless the court dispenses with notice under this subsection, the persons  
20 specified in sub. (2) (g), if known to the petitioner.

21 (c) The county corporation counsel, if the county has an interest in the matter.

\*\*\*\*NOTE: This means that the petitioner determines whether the county has an  
interest and gets notice. Is that okay?

22 (5) The court shall consider all of the following in reviewing the petition:

23 (a) The wishes of the ward, if known.

(b) Whether the duration of the ward's disability is likely to be sufficiently brief so as to justify dismissal of the proceedings in anticipation of the ward's recovered ability to decide whether, and to whom, to transfer his or her assets.

(c) Whether the proposed transfer will benefit the ward, the ward's estate, or members of the ward's immediate family.

\*\*\*\*NOTE: I understand that this provision is sought to codify *Matter of Guardianship of F.E.H.*, 154 Wis. 2d 576 (1990). Therefore, I included "immediate" as an adjective modifying "family".

(d) Except for gifting that is authorized under s. 54.20 (2) (a), whether the donees or beneficiaries under the proposed disposition are reasonably expected objects of the ward's generosity and whether the proposed disposition is consistent with any ascertained wishes of the ward or known estate plan or pattern of lifetime gifts that he or she has made.

(e) Whether the proposed disposition will produce tax savings that will significantly benefit the ward, his or her dependents, or other persons for whom the ward would be concerned.

(f) The factors specified in sub. (2) (a) to (g) and any statements or other evidence under sub. (3).

(g) Any other factors that the court determines are relevant.

**(6)** The court may grant the petition under sub. (2) and enter an order directing the guardian of the estate to take action requested in the petition, if the court finds and records all of the following:

(a) That the ward has incapacity to perform the act for which approval is sought and the incapacity is not likely to change positively within a reasonable period of time.

(b) That a competent individual in the position of the ward would likely perform the act under the same circumstances.

(c) That, before the ward had incapacity to perform the act for which approval is sought, he or she did not manifest intent that is inconsistent with the act.

(7) Nothing in this section requires a guardian to file a petition under this section and a guardian is not liable or accountable to any person for having failed to file a petition under this section.

**54.22 Petition for authority to sell, mortgage, pledge, lease, or exchange ward's property.** The court, on the application petition of the guardian of the estate or of any other person interested in the estate of any a ward, after such notice if any, as any notice that the court directs, may authorize or require the guardian to sell, mortgage, pledge, lease, or exchange any property of the guardianship estate of the ward upon such terms as the court may order, subject to ch. 786, for the purpose of paying the ward's debts, providing for the ward's care, maintenance, and education and the care, maintenance, and education of the ward's dependents, investing the proceeds, or for any other purpose ~~which~~ that is in the best interest of the ward.

\*\*\*\*NOTE: I am repeating this \*\*\*\*NOTE because the response was somewhat unclear. This provision appears to be in direct conflict with s. 54.19 (2), (3), and (4), each of which require the guardian to act with respect to the ward's property in ways that are redundant to this provision, but *without* requiring court approval. Which alternative do you prefer? Is the issue related to a dollar value on the property, i.e., property over a value of, say, \$100,000 would require court approval before the guardian may act? Or should either this provision or s. 54.19 (2), (3), and (4) drop out?

**54.23 Trust Banks and trust companies, exemption from investment restraints.** ~~The limitations of this section~~ Nothing in this chapter relating to the retention, sale, investment, or reinvestment of any asset ~~shall not be applicable~~ may



1 be interpreted to be inapplicable to any bank or trust company authorized to exercise  
2 trust powers.

3 **54.25 Guardian Duties and powers of guardian of the person of**  
4 **incompetent. (1) DUTIES.** A guardian of the person shall do all of the following:

5 (a) ~~A guardian of the person of an incompetent appointed under s. 880.33 shall~~  
6 ~~make~~ Make an annual report on the condition of the ward to the court that ordered  
7 the guardianship and to the county department designated under s. 55.02. That  
8 county department shall develop reporting requirements for the guardian of the  
9 person. The report shall include, ~~but not be limited to,~~ the location of the ward, the  
10 health condition of the ward, any recommendations regarding the ward, and a  
11 statement of as to whether or not the ward is living in the least restrictive  
12 environment consistent with the needs of the ward. ~~The guardian may fulfill the~~  
13 ~~requirement under this subsection by submitting the report required under s. 55.06~~  
14 ~~(10).~~

15 (b) ~~A guardian of the person shall endeavor~~ Endeavor to secure any necessary  
16 care, ~~or services or appropriate protective placement on behalf of~~ for the ward. ~~that~~  
17 are in the ward's best interests, based on all of the following:

18 1. Regularly inspect, in person, the ward's condition, surroundings, and  
19 treatment.

20 2. Examine of the ward's patient health care records and treatment records.

21 3. Attend and participate in staff meetings of any facility in which the ward  
22 resides or is a patient, if the meeting includes a discussion of the ward's treatment  
23 and care.

24 4. Inquire into the risks and benefits of, and alternatives to, treatment for the  
25 ward, particularly if drastic or restrictive treatment is proposed.

1           (2) POWERS. (a) *Presumption in favor of limited guardianship.* A guardian of  
2     the person has only those rights and powers that the guardian is specifically  
3     authorized to exercise by court order. Any other right or power is retained by the  
4     ward, unless the ward has been declared incompetent to exercise the right under par.  
5     (c) or the power has been transferred to the guardian under par. (d).

6           (b) *Rights retained by individuals determined incompetent.* An individual  
7     determined incompetent retains the power to exercise all of the following rights,  
8     without consent of the guardian:

9           1. To have access to and communicate privately with the court and with  
10    governmental representatives, including the right to have input into plans for  
11    support services, the right to initiate grievances, including under state and federal  
12    law regarding resident of patient rights, and the right to participate in  
13    administrative hearings and court proceedings.

14          2. To have access to, communicate privately with, and retain legal counsel, with  
15    fees paid by the ward's estate, subject to court approval.

16          3. To have access to and communicate privately with representatives of the  
17    protection and advocacy agency under s. 51.62 and the board on aging and long-term  
18    care.

19          4. To protest a residential placement made under s. 55.05 (5), and to be  
20    discharged from a residential placement unless the individual is protectively placed  
21    under s. 55.06 or the elements of s. 55.06 (11) are present.

22          5. To petition for court review of guardianship, protective services, protective  
23    placement, or commitment orders.

24          6. To give or withhold a consent reserved to the individual under ch. 51.

1           7. To exercise any other rights specifically reserved to the individual by statute  
2 or the constitutions of the state or the United States, including the rights to free  
3 speech, freedom of association, and the free exercise of religious expression.

4           (c) *Declaration of incompetence to exercise certain rights.* 1. The court may, as  
5 part of a proceeding under s. 54.44 in which an individual is found incompetent and  
6 guardian is appointed, declare that the individual has incapacity to exercise one or  
7 more of the following rights:

8           a. The right to consent to marriage.

9           b. The right to execute a will.

10          c. The right to serve on a jury.

11          d. The right to apply for an operator's license, a license issued under ch. 29, or  
12 a credential, as defined in s. 440.01 (2) (a), if the court finds that the individual is  
13 incapable of understanding the nature and risks of the licensed or credentialed  
14 activity, to the extent that engaging in the activity would pose a substantial risk of  
15 physical harm to the individual or others. A failure to find that an individual is  
16 incapable of applying for a license or credential is not a finding that the individual  
17 qualifies for the license or credential under applicable laws and rules.

18          e. The right to consent to sterilization, if the court finds that the individual is  
19 incapable of understanding the nature, risk, and benefits of sterilization, after the  
20 nature, risk, and benefits have been presented in a form that the individual is most  
21 likely to understand.

22          f. The right to consent to organ, tissue, or bone marrow donation.

23          g. The right to vote, if the court finds that the individual is incapable of  
24 understanding the objective of the elective process.

\*\*\*\*NOTE: Section 880.33 (9), stats., upon which this language is based, requires that the court's determination be communicated in writing by the clerk of court to the election official or agency charged under s. 6.48, 6.92, 6.925, or 6.93 with the responsibility for determining challenges to registration and voting that may be directed against that elector. Otherwise, I think it is possible that the official or agency may have no way of knowing if the vote is countable. Do you want this requirement added to the language? This NOTE also applies to subd. 4.

1           2. Any finding under subd. 1. that an individual lacks evaluative capacity to  
2       exercise a right must be based on clear and convincing evidence. In the absence of  
3       such a finding, the right is retained by the individual.

4           3. If an individual is declared not competent to exercise a right under subd. 1.  
5       or 4., a guardian may not exercise the right or provide consent for exercise of the right  
6       on behalf of the individual. If the court finds with respect to a right listed under subd.  
7       1. a., d., e., or f. that the individual is competent to exercise the right under some but  
8       not all circumstances, the court may order that the individual retains the right to  
9       exercise the right only with consent of the guardian of the person.

10          4. Regardless of whether a guardian is appointed, a court may declare that an  
11       individual is not competent to exercise the right to vote if it finds by clear and  
12       convincing evidence that the individual is incapable of understanding the objective  
13       of the elective process. If the petition for a declaration of competence to vote is not  
14       part of a petition for guardianship, the same procedures shall apply as would apply  
15       for a petition for guardianship.

\*\*\*\*NOTE: Please see the \*\*\*\*NOTE under subd. 1. g., above.

16          (d) 1. *Guardian authority to exercise certain powers.* A court may authorize a  
17       guardian of the person to exercise all or part of any of the powers specified in subd.  
18       2. only if it finds, by clear and convincing evidence, that the individual lacks  
19       evaluative capacity to exercise the power. The court shall authorize the guardian to  
20       exercise only those powers that are necessary to provide for the individual's personal

1 needs, safety, and rights and to exercise the powers in a manner this is appropriate  
2 to the individual and that constitutes the least restrictive form of intervention. The  
3 court may limit the authority of the guardian with respect to any power to allow the  
4 individual to retain power to make decisions about which the individual is able  
5 effectively to receive and evaluate information and communicate decisions.

6 2. All of the following are powers subject to subd. 1:

7 a. Except as provided under subd. 2. b., c., and d., and except for consent to  
8 psychiatric treatment and medication under ch. 51, the power to give informed  
9 consent to voluntary or involuntary medical examination and treatment and to the  
10 voluntary receipt by the ward of medication, including any appropriate psychotropic  
11 medication, if the guardian has first made a good-faith attempt to discuss with the  
12 ward the ward's voluntary receipt of the psychotropic medication and the ward does  
13 not protest. For purposes of this subdivision 2. a., "protest" means make more than  
14 one discernible negative response, other than mere silence, to the offer of,  
15 recommendation for, or other proffering of voluntary receipt of psychotropic  
16 medication. "Protest" does not mean a discernible negative response to a proposed  
17 method of administration of the psychotropic medication. A guardian may consent  
18 to the involuntary administration of psychotropic medication only pursuant to a  
19 court order under ch. 55. In determining whether medication or medical treatment  
20 is in the ward's best interest, the guardian shall consider the invasiveness of the  
21 medication or treatment and the likely benefits and side effects of the medication or  
22 treatment.

23 b. Unless it can be shown by clear and convincing evidence that the ward would  
24 never have consented to research participation, the power to authorize the ward's  
25 participation in an accredited or certified research project if the research might help

1 the ward; or if the research might not help the ward but might help others, and the  
2 research involves no more than minimal risk of harm to the ward.

3 c. The power to authorize the ward's participation in research that might not  
4 help the ward but might help others even if the research involves greater than  
5 minimal risk of harm to the ward if the guardian can establish by clear and  
6 convincing evidence that the ward would have elected to participate in such  
7 research; and the proposed research was reviewed and approved by the research and  
8 human rights committee of the institution conducting the research. The committee  
9 shall have determined that the research complies with the principles of the  
10 statement on the use of human subjects for research adopted by the American  
11 Association on Mental Deficiency, and with the federal regulations for research  
12 involving human subjects for federally supported projects.

13 d. Unless it can be shown by clear and convincing evidence that the ward would  
14 never have consented to any experimental treatment, the power to consent to  
15 experimental treatment if the court finds that the ward's mental or physical status  
16 presents a life-threatening condition; the proposed experimental treatment may be  
17 a life saving remedy; all other reasonable traditional alternatives have been  
18 exhausted; 2 examining physicians have recommend the treatment; and, in the  
19 court's judgment, the proposed experimental treatment is in the ward's best  
20 interests.

21 e. The power to give informed consent to social and supported living services.

22 f. The power to give informed consent to release of medical, treatment, and  
23 other confidential records.

24 g. The power to determine the individual's county or state of residence.

25 h. The power to make decisions related to mobility and travel.

1 i. The power to admit the individual to residential facilities as provided under  
2 s. 55.05 (5) or make an emergency protective placement under s. 55.06 (11).

3 j. The power to choose providers of medical, social, and support living services.

4 k. The power to make decisions regarding educational and vocational  
5 placement and support services or employment.

6 L. The power to make decisions regarding initiating a petition for the  
7 termination of marriage.

8 m. The power to receive all notices on behalf of the ward.

9 n. The power to act in all proceedings as an advocate of the ward, except the  
10 power to enter into a contract that binds the ward or the ward's property or to  
11 represent the ward in any legal proceedings pertaining to the property, unless the  
12 guardian of the person is also the guardian of the estate.

13 o. The power to apply for protective placement under s. 55.06 or for  
14 commitment under s. 51.20 or 51.45 (13) for the ward.

15 p. The power to have charge of the ward.

\*\*\*\*NOTE: In s. 54.25 (2) (d) 2. i., m., n., o., and p., I have attempted to "weave" in the parts of s. 880.38 (1), stats., that seemed to fit (in LRB-0039/P1, this provision was renumbered s. 54.25 (1) (c)), but it didn't fit well there. The power to "have charge of" the ward is a change from the statutory "have custody of"; is it an acceptable wording change? Back again to my confusion about prohibiting the guardian of the person from entering into a contract that binds the ward — what about a contract with a facility (e.g., a nursing home), which requires a financial commitment? Would it be necessary for the guardian of the estate to sign? If the prohibition is unchanged, the power of the guardian of the person to "admit a ward to certain residential facilities" under subd. i. is, it would seem, significantly less than it first appears to be.

16 r. Any other power the court may specifically identify.

17 3. In exercising powers and duties delegated to the guardian of the person  
18 under this paragraph, the guardian of the person shall, consistent with meeting the  
19 individual's essential requirements for health and safety and protecting the  
20 individual from abuse, exploitation, and neglect, do all of the following:

b. Make diligent efforts to identify and honor the individual's preferences with respect to choice of place of living, personal liberty and mobility, choice of associates, communication with others, personal privacy, and choices related to sexual expression and procreation. In making a decision to act contrary to the individual's expressed wishes, the guardian shall take into account the individual's understanding of the nature and consequences of the decision, the level of risk involved, the value of the opportunity for the individual to develop decision-making skills, and the need of the individual for wider experience.

## PROCEDURES

**54.30 Jurisdiction and venue. (1) JURISDICTION IN CIRCUIT COURT.** The circuit court ~~shall have~~ has subject matter jurisdiction over all petitions for guardianship. A guardianship of the estate of any person, once granted, shall extend to all of his or her estate in this state and shall exclude the jurisdiction of every other circuit court, except as provided in ch. 786.

\*\*\*\*NOTE: I believe that you have changes for this subsection, based on changes from the Legislative Council ch. 55 Committee, but am not sure what they are.

\*\*\*\*NOTE: I did not draft language in your proposal that establishes jurisdiction in circuit court over all petitions for protective placement, as such a provision properly belongs in ch. 55. Or, because ch. 55, stats., is proposed to undergo extensive changes under the Legislative Council committee, perhaps such a provision, if not included in the Legislative Council proposal, should be an amendment to one of the committee's appropriate bills.

(2) VENUE. All petitions for guardianship of residents of the state shall be directed to the circuit court of the county of residence of the ~~person subject to~~



1 guardianship proposed ward or of the county in which the person proposed ward is  
2 physically present. A petition for guardianship of the person or estate of a  
3 nonresident may be directed to the circuit court of any county where in which the  
4 person nonresident or any property of the nonresident may be found.

\*\*\*\*NOTE: I did not draft language of your proposal that requires that petitions for protective placement be directed to the circuit court, because such a provision more properly belongs in ch. 55. Do you want me to draft it there?

\*\*\*\*NOTE: Please let me know specifically what you want me to do about the definition of residence and change of residence of a ward by a guardian.

5 (3) CHANGE OF VENUE. (a) *Original proceeding.* The court ~~wherein~~ in which a  
6 petition is first filed shall determine venue. ~~If it is determined~~ the court determines  
7 that venue lies in another county, the court shall order the entire record certified to  
8 the proper court. A court ~~wherein~~ in which a subsequent petition is filed shall, ~~upon~~  
9 being if it is satisfied of that an earlier filing took place in another court, summarily  
10 dismiss such the petition.

11 (b) *Change of residence of ward or guardian.* ~~If a guardian removes from the~~  
12 ~~county where appointed to another county within the state or a ward removes from~~  
13 ~~the county in which he or she has resided~~ changes residence from one county to  
14 ~~another county within the state, the circuit court for the county in which the ward~~  
15 ~~resides may appoint a new guardian as provided by law for the appointment of a~~  
16 ~~guardian. Upon verified petition of the new guardian, accompanied by a certified~~  
17 ~~copy of appointment and bond if the appointment is in another county, and upon the~~  
18 ~~notice prescribed by s. 879.05 to the originally appointed guardian, unless he or she~~  
19 ~~is the same person, and to any other persons that the court shall order, the court of~~  
20 ~~original appointment may order the guardianship accounts settled and the property~~  
21 ~~delivered to the new guardian.~~ venue may be transferred to the ward's new county  
22 of residence under the following procedure:

1           1. A person shall file a petition for change of venue in the county in which venue  
2 for the guardianship currently lies.

3           2. The person filing the petition under subd. 1. shall give notice to the  
4 corporation counsel of the county in which venue for the guardianship currently lies  
5 and to the register in probate for the county to which change of venue is sought.

      \*\*\*\*NOTE: Should notice also be given to the corporation counsel of the county to  
      which change of venue is sought?

6           3. If no objection to the change of venue is made within 15 days after the date  
7 on which notice is given under subd. 2., the circuit court of the county in which venue  
8 for the guardianship currently lies may enter an order changing venue. If objection  
9 to the change of venue is made within 15 days after the date on which notice is given  
10 under subd. 2., the circuit court of the county in which venue for the guardianship  
11 currently lies shall set a date for a hearing within 7 days after the objection is made  
12 and shall give notice of the hearing to the corporation counsel of that county and to  
13 the corporation counsel and register in probate of the county to which change of  
14 venue is sought.

15           **54.34 Petition; fees for guardianship.** (1) Any ~~relative, public official or~~  
16 ~~other person,~~ may petition for the appointment of a guardian of a ~~person subject to~~  
17 ~~guardianship for an individual.~~ Such ~~The~~ petition shall state, so far as may be all of  
18 the following, if known to the petitioner:

      \*\*\*\*NOTE: I did not add "or agency" after "person" in s. 54.34 (1), as requested; the  
      definition of "person" in 990.01 (26), stats., which controls terms used throughout the  
      statutes, is broad enough to encompass agencies.

19           (a) The name, date of birth, residence and post-office address of the proposed  
20 ward.

21           (b) The specific nature of the proposed ward's alleged incapacity with  
22 ~~specification of the incompetency or spendthrift habits.~~

1 (c) The approximate value of the proposed ward's property and a general  
2 description of its nature.

3 (d) Any assets of the proposed ward previously derived from or benefits of the  
4 proposed ward now due and payable from the U.S. department of veterans affairs.

5 (e) Any other claim, income, compensation, pension, insurance or allowance to  
6 which the proposed ward may be entitled.

7 (f) Whether the proposed ward has any guardian presently.

8 (g) The name and post-office address of any person nominated as guardian by  
9 the petitioner.

10 (h) The names and post-office addresses of ~~the spouse and presumptive or~~  
11 ~~apparent adult heirs of the proposed ward, and all other persons believed by the~~  
12 ~~petitioner to be interested parties.~~

13 (i) The name and post-office address of the person or institution ~~having the ,~~  
14 if any, that has care and custody of the proposed ward or the facility, if any, that is  
15 providing care to the proposed ward.

16 (j) The interest of the petitioner, and, if a public official or creditor is the  
17 petitioner, ~~then the fact of indebtedness or continuing liability for maintenance or~~  
18 ~~continuing breach of the public peace as well as~~ and the authority of the petitioner  
19 to act.

20 (k) Whether the proposed ward is a recipient of a public benefit, including  
21 medical assistance or a benefit under s. 46.27.

22 (L) The agent under any current, valid power of attorney for health care or  
23 durable power of attorney that the proposed ward has executed.

1 (m) Whether the petitioner is requesting a full or limited guardianship and, if  
2 limited, the specific authority sought by the petitioner for the guardian or the specific  
3 rights of the individual that the petitioner seeks to have removed or transferred.

4 (n) Whether the proposed ward, if married, has children who are not children  
5 of the current marriage.

6 (2) A petition for guardianship may also include an application for protective  
7 placement or protective services or both under ch. 55.

\*\*\*\*NOTE: Instead of moving s. 54.34 (3) (renumbered from s. 880.07 (4), stats.), I  
repealed it, because, as you noted, it's redundant to s. 54.60 (5).

8 **54.36 Examination of proposed ward.** Whenever it is proposed to appoint  
9 a guardian on the ground of a proposed ward's alleged incompetency, a licensed  
10 physician or licensed psychologist, or both, shall furnish a written statement  
11 concerning ~~the mental condition~~ any incapacity of the proposed ward, based upon  
12 examination. The privilege under s. 905.04 shall does not apply to ~~this the~~  
13 statement. ~~A The petitioner shall provide a copy of the statement shall be provided~~  
14 ~~to the proposed ward, or his or her counsel, the guardian ad litem, and the~~  
15 ~~petitioner's attorney, if any.~~ Prior to the examination, ~~under this subsection, of a~~  
16 ~~person alleged to be not competent to refuse psychotropic medication under s. 880.07~~  
17 ~~(1m), the person the proposed ward~~ shall be informed that ~~his or her~~ statements  
18 made by the proposed ward may be used as a basis for a finding of incompetency ~~and~~  
19 ~~an order for protective services, including psychotropic medication.~~ The person shall  
20 also be informed that he or she has a right to ~~remain silent~~ refuse to participate in  
21 the examination or speak to the examiner and that the examiner is required to report  
22 to the court even if the person ~~remains silent~~ does not speak to the examiner. The  
23 issuance of such a warning to the person prior to each examination establishes a

1 presumption that the person understands that he or she need not speak to the  
2 examiner. Nothing in this section prohibits the use of a report by a physician or  
3 psychologist that is based on an examination of the proposed ward by the physician  
4 or psychologist before filing the petition for appointment of a guardian, but the court  
5 will consider the recency of the report in determining whether the report sufficiently  
6 describes the proposed ward's current state and in determining the weight to be  
7 given to the report.

\*\*\*\*NOTE: Who informs the proposed ward that his or her statements may be used  
as a basis for a finding of incompetency? The petitioner? Other?

\*\*\*\*NOTE: Please review this changed language to make sure I've now captured  
your intent.

8 **54.38 Notice. (1) FORM AND DELIVERY OF NOTICE.** A notice shall be in writing.  
9 A copy of the petition, motion, or other required document shall be attached to the  
10 notice. Unless otherwise provided, notice may be delivered in person, by certified  
11 mail with return receipt requested, or by facsimile transmission. Notice is  
12 considered to be given by proof of personal delivery or by proof that the notice was  
13 mailed to the last-known address of the recipient or was sent by facsimile  
14 transmission to the last-known facsimile transmission number of the recipient.

\*\*\*\*NOTE: Instead of drafting "petition or other moving papers," I consulted Bob  
Nelson, the civil procedure drafter, who suggested "petition, motion, or other required  
document." This same comment applies to s. 54.38 (2) (a).

15 **(2) NOTICE OF HEARING FOR APPOINTMENTS AND REHEARINGS, SERVICE, AND DELIVERY.**  
16 (intro.) Upon the filing of a petition for guardianship, ~~and the court being of the~~  
17 person or of the estate, including appointment or change of a guardian, if the court  
18 is satisfied as to compliance with s. 880.07 54.34, the court shall, except as provided  
19 in sub. (3), order service of notice on the proposed ward and guardian, if any, and  
20 delivery of notice by the petitioner to interested persons of the time and place of the  
21 hearing as follows:

1           ~~(a) A petitioner shall have notice served of a petition for appointment or change~~  
2     ~~of a guardian upon~~ On the proposed incompetent ward and existing guardian, if any,  
3     by personal service at least 10 days before the time set for hearing. If such ~~proposed~~  
4     ~~incompetent~~ the proposed ward is in custody or confinement, a the petitioner shall  
5     have notice served by registered or certified mail on the proposed incompetent's  
6     ward's custodian, who shall immediately serve it on the proposed incompetent ward.  
7     The process server or custodian shall inform the proposed incompetent ward of the  
8     complete contents of the notice ~~and certify thereon~~ and petition, motion, or other  
9     required document; certify on the notice that the process server or custodian served  
10    and informed the proposed incompetent ~~and returned~~ ward; and return the  
11    certificate and notice to the circuit judge. ~~The notice shall include the names of all~~  
12    ~~persons who are petitioning for guardianship. A copy of the petition shall be attached~~  
13    ~~to the notice. The court shall cause the proposed incompetent, if able to attend, to~~  
14    ~~be produced at the hearing. The proposed incompetent is presumed able to attend~~  
15    ~~unless, after a personal interview, the guardian ad litem certifies in writing to the~~  
16    ~~court the specific reasons why the person is unable to attend. If the person is unable~~  
17    ~~to attend a hearing because of physical inaccessibility or lack of transportation, the~~  
18    ~~court shall hold the hearing in a place where the person may attend if requested by~~  
19    ~~the proposed ward, guardian ad litem, adversary counsel or other interested person.~~  
20    ~~Such notice shall also be given personally or by mail at least 10 days before the~~  
21    ~~hearing to the proposed incompetent's counsel, if any, guardian ad litem,~~  
22    ~~presumptive adult heirs or other persons who have legal or physical custody of the~~  
23    ~~proposed incompetent whose names and addresses are known to the petitioner or can~~  
24    ~~with reasonable diligence be ascertained, to any governmental or private agency,~~  
25    ~~charity or foundation from which the proposed incompetent is receiving aid and to~~

1 ~~such other persons or entities as the court may require. The court shall then proceed~~  
2 ~~under s. 880.33 court.~~

3 (b) Personally or by mail at least 10 days before the time set for hearing, to all  
4 of the following:

- 5 1. The proposed ward's counsel, if any.
- 6 2. The proposed ward's guardian ad litem.
- 7 3. Any presumptive adult heirs of the proposed ward.
- 8 4. Any other interested persons, unless specifically waived by the court.
- 9 5. The agent under any durable power of attorney or power of attorney for  
10 health care of the ward.
- 11 6. Any person who has legal or physical custody of the proposed ward.
- 12 7. Any public or private agency, charity, or foundation from which the proposed  
13 ward is receiving aid or assistance.
- 14 8. Any other person that the court requires.

15 (3) NOTICE OF HEARING FOR APPOINTMENT OF GUARDIAN FOR A MINOR. ~~When~~ If the  
16 proposed ward is a minor, ~~notice shall be given as provided in s. 879.05 the court shall~~  
17 order distribution of notice by the petitioner of the time and place of the hearing to  
18 all of the following persons, if applicable:

- 19 (a) The proposed ward's spouse, if any.
- 20 (b) The proposed ward's ~~parents~~ parent, unless the parent's parental rights  
21 have been judicially terminated.
- 22 (c) ~~A minor~~ The proposed ward, if the proposed ward is over 14 years of age  
23 unless the minor appears at the hearing.
- 24 (d) Any other person, ~~agency, institution, welfare department or other entity~~  
25 having that has the legal or actual physical custody of the minor.

\*\*\*\*NOTE: I did not change "that" to "who," as requested, since the term "person" may encompass units of government, etc.

1           (4) REHEARINGS. Notice of a rehearing to determine if a ward is a proper subject  
2 to continue under guardianship shall be given as required for the appointment of a  
3 guardian under subs. (1), (2), and (3).

4           (5) NOTICE OF APPOINTMENT OF GUARDIAN OF A MINOR WARD. If for any reason the  
5 court fails to appoint as guardian the nominee of the minor, the guardian who  
6 qualifies shall give notice of the guardian's appointment to the minor by certified  
7 mail addressed to the minor's last-known post-office address and shall file an  
8 affidavit of such the mailing shall be filed with the court within 10 days after the  
9 issuance of letters notice is given.

10           (6) NOTICE OF PETITION AND HEARING FOR TEMPORARY GUARDIANSHIP. The person  
11 petitioning petitioner for appointment of a temporary guardian shall cause give  
12 notice to be given under s. 880.08 of that the petition to the minor, spendthrift or  
13 alleged incompetent and, if the appointment is made, shall give notice of the  
14 appointment to the ward. The time limits of s. 880.08 do not apply to notice given  
15 under this subsection proposed ward. The notice shall be served before or at the time  
16 the petition is filed or as soon thereafter as possible and shall include notice of the  
17 right to counsel and of the right to petition for reconsideration or modification of the  
18 temporary guardianship at any time under s. 880.34 within 30 days of receipt of the  
19 notice 54.50 (1) (c) 4. The petitioner shall serve notice of the order for hearing on the  
20 proposed ward before the hearing or not later than 3 calendar days after the hearing.  
21 If the petitioner serves notice after the hearing is conducted and the court has  
22 entered an order, the petitioner shall include the court's order with the notice of the  
23 order for hearing.



\*\*\*\*NOTE: As requested, I retained s. 880.15 (1s), stats., and replaced the former language of s. 54.50 (1) (c) 2. with it. I added to it the language you had requested for a redraft of s. 54.50 (1) (c) 2., however. Rather than placing this in s. 54.50 (1) (c), I have put it in s. 54.38, the notice section. Please review.

1           **54.40 Guardian ad litem in ~~incompetency cases; appointment; duties;~~**  
2           **termination.** (1) APPOINTMENT. The court shall appoint a guardian ad litem  
3           ~~whenever it is proposed that the court appoint a guardian on the ground of~~  
4           ~~incompetency under s. 880.33, when a petition is brought under s. 54.34 to~~  
5           ~~protectively place a person or order protective services under s. 55.06, to review any~~  
6           ~~protective placement or protective service order under s. 55.06, or to terminate a~~  
7           ~~protective placement under s. 55.06, or at any other time that the court determines~~  
8           ~~it is necessary.~~

9           (2) QUALIFICATIONS. The guardian ad litem shall be an attorney admitted to  
10          practice in this state. No person who is an interested party in a proceeding, appears  
11          as counsel in a proceeding on behalf of any party, or is a relative or representative  
12          of an interested party may be appointed guardian ad litem in that proceeding or in  
13          any other proceeding that involves the same proposed ward.

\*\*\*\*NOTE: Should "interested party" be changed to "interested person"?

14          (3) RESPONSIBILITIES. The guardian ad litem shall be an advocate for the best  
15          interests of the proposed ward ~~or alleged incompetent~~ as to guardianship, protective  
16          placement, and protective services. The guardian ad litem shall function  
17          independently, in the same manner as an attorney for a party to the action, and shall  
18          consider, but ~~shall not be~~ is not bound by, the wishes of the proposed ward ~~or alleged~~  
19          ~~incompetent~~ or the positions of others as to the best interests of the proposed ward  
20          ~~or alleged incompetent.~~ The guardian ad litem has none of the rights or duties of a  
21          general guardian.

22          (4) GENERAL DUTIES. A guardian ad litem shall do all of the following:

1 (a) Interview the proposed ward ~~or alleged incompetent~~ and explain the  
2 contents of the petition, the applicable hearing procedure, the right to counsel, and  
3 the right to request or continue a limited guardianship.

4 (b) Advise the proposed ward ~~or alleged incompetent~~, both orally and in  
5 writing, of that person's rights to be present at the hearing, to a jury trial, to an  
6 appeal, to counsel, and to an independent medical or psychological examination on  
7 the issue of competency, at county expense if the person is indigent.

8 (c) Interview the proposed guardian, the proposed standby guardian, if any,  
9 and any other person seeking appointment as guardian and report to the court  
10 concerning the fitness of each individual interviewed to serve as guardian and  
11 concerning the report under s. 54.15 (8).

\*\*\*\*NOTE: Have I handled this provision as the memo intends? It was not clear to  
me that it had been agreed to employ the criminal history and patient abuse record search  
under s. 50.065, stats., for s. 54.15 (8) or here.

12 (d) 1. Review any power of attorney for health care under ch. 155, or any  
13 durable power of attorney executed by the proposed ward or any other advance  
14 planning to avoid guardianship in which the proposed ward had engaged.

15 2. Interview any agent appointed by the proposed ward under any document  
16 specified in subd. 1.

17 3. Report to the court concerning whether or not the proposed ward's advance  
18 planning is adequate to preclude guardianship.

19 (e) Request that the court order additional medical, psychological, or other  
20 evaluation, if necessary.

21 (f) If applicable, inform the court and petitioner's attorney or, if none, the  
22 petitioner that the proposed ward ~~or alleged incompetent~~ objects to a finding of  
23 incompetency, the present or proposed placement, or the recommendation of the